

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* TIMOTHY BAKER

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Appeal 2007-1608  
Application 10/648,048  
Technology Center 3700

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Decided: October 29, 2007

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Before TERRY J. OWENS, JENNIFER D. BAHR and JOSEPH A. FISCHETTI,  
*Administrative Patent Judges.*

OWENS, *Administrative Patent Judge.*

ORDER REMANDING TO THE EXAMINER

The Appellant appeals from a rejection of claims 1-4 and 6-10. Claims 5, 11 and 13 stand allowed and claims 12 and 14 have been canceled.

In the Brief the Appellant states that the grounds of rejection to be reviewed on appeal are (Br. 3):

Whether the § 103(a) rejection of claims 1-4 should be reversed as being an improper rejection based upon the combination of the Maier and Anderson references.

Whether the § 103(a) rejection of claims 1-4, 8 and 9 should be reversed as being an improper rejection based upon the combination of the Kopras and Anderson references.

In the Examiner's Answer the Examiner states (Ans. 2):

The following grounds of rejection have not been withdrawn by the examiner, but they are not under review on appeal because they have not been presented for review in the appellant's brief.

Claims 6-7 rejected under 35 U.S.C. 103(a) as being unpatentable over Rubly (US 2,607,092), Maier (US 2,900,856), Dukess (US 4,334,522), Anderson (US 5,982,059), Kopras (US 6,048,260), and Wu (US 6,481,130).

Accordingly, the Examiner's Answer states that claims 1-4 and 8-10 are rejected under 35 U.S.C. § 103 as follows: claims 1-4 and 8-10 over Maier in view of Anderson, and claims 1-4, 8 and 9 over Kopras in view of Anderson (Ans. 3-4).

Regarding claims 6 and 7, the Appellant states in both the Brief (Br. 8) and the Reply Brief (Reply Br. 4):

The dependent claims necessarily incorporate the features of the claims from which they depend in addition to defining other features and/or functionality and are therefore believed to be in condition for immediate allowance. This is particularly true with regard to claims 6-10 which depend from allowed claim 5.

Claims 6-10, however, do not depend from allowed claim 5. Claims 6, 7, 9 and 10 depend from rejected claim 1, and claim 8 depends from rejected claim 3. Thus, it appears that the Appellant's failure to include in the statement of grounds of rejection to be reviewed on appeal rejections under 35 U.S.C. § 103 of:

1) claims 8-10 over Maier in view of Anderson, 2) claim 6 over Maier in view of Anderson, Wu and Dukess, 3) claim 6 over Maier in view of Koprass, Wu and Dukess, 4) claim 7 over Maier in view of Anderson and Rubly, and 5) claim 7 over Maier in view of Koprass and Rubly (final rejection mailed Nov. 21, 2005, pp. 3-5), was due to the Appellant's erroneous belief that those claims depend from an allowed claim.

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We therefore remand the application for the Examiner to have the Appellant clarify whether the rejections of claims 8-10 over Maier in view of Anderson and the rejections of claims 6 and 7 are appealed. If so, the Appellant and the Examiner must present their arguments as to the propriety of those rejections.

REMANDED

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